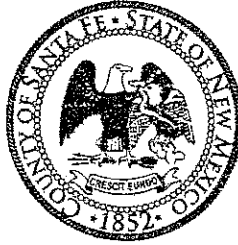


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 17-5001
Eldorado Area Water and Sanitation District, Applicants

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on September 12, 2017, on the Application of Eldorado Area Water and Sanitation District, appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of Chapter 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment, to be placed within the 75' foot setback from the FEMA Designated Special Flood Hazard Area, a variance of Chapter 7.11.12.3, Table 7-15, to allow a 50 Foot separation from access points, and a variance of Chapter 7.3.3 Setbacks, Table 7-A (Setback Table) to allow the facility to be located within an easement which is 7.5 feet from the property boundary. The 0.072 acre easement site is within a 3.56 acre parcel and lies within the Residential Estate (RES-E) Zoning District. The Board of County Commissioners (BCC), having reviewed the Application, staff reports, the Hearing Officer's recommended decision, and having conducted a public hearing on the Application, finds that the Application is well-taken and allows the Application based on the following findings of fact and conclusions of law:

1. Background

1. The Applicant appeals the Santa County Planning Commission's decision denying three variances in order to place an 800 square foot well production facility and water treatment purifying equipment within a 3,100 square foot easement. The variances sought include a variance of Chapter 7, Section 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment to be placed within the 75' foot setback from the FEMA designated Floodplain Hazard Area; a variance of Chapter 7, Section 7.11.12.3, Table 7-15, to allow a 25 foot separation from access points rather than the required 200 feet of separation from access points; and a variance of Chapter 7, Section 7.3.3, Setbacks, Table 7-A (Setback Table), to allow the facility to be located 7.5 feet from the property boundary.

2. The property is located at 3 Carissa Drive, in Eldorado within, Section 17, Township 15 North, Range 10 East, in Commission District 5.

3. The Applicant is the grantee of a 0.072 acre easement on a 3.56 acre parcel, as indicated by the well easement agreement recorded in office of the Santa Fe County Clerk on August 4, 2016, as Instrument #1800603. The Applicant's Agent is Molzen-Corbin and Associates.

The Applicant stated that a detailed design of the subject well was initiated in 2014. Based on the results of the design, the Applicant proceeded with easement acquisition and well development. According to its Utility Master Plan completed in July 2013, the Applicant has an acute need to develop additional groundwater sources to meet peak summer water demands. The Applicant filed the application for the three variances as a result of the need to meet the peak summer water demands.

5. The well house will include a facility to blend water to reduce the high levels of antimony in the water from the well before introducing it into the water system.

II. Applicable Provisions of the SLDC

6. As set forth in Chapter 1, Section 1.4, Purpose, the SLDC was developed in part to promote the health, safety and general welfare of the present and future residents of the County. Additionally, according to Chapter 1, Section 1.4.2.20, the SLDC is intended to ensure that building projects are planned, designed, constructed, and managed to minimize adverse environmental impacts, a goal which includes minimizing the impact of development on the functioning of FEMA designated floodplains. The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC) (which were identical in the prior iteration of the SLDC, Ordinance No. 2015-11), and which govern this Application are the following:

Chapter 7, Section 7.17.5.2.6, All other development

1. Erosion setbacks shall be provided for structures adjacent to natural arroyos, channels, or streams such that: (a) a minimum setback of 25' shall be provided from all arroyos with flow rates of 100 cubic feet per second (100cfs); or (b) a minimum setback of 75' shall be provided from all FEMA designated 100 year Floodplains. Setbacks from FEMA designated Floodplains may be reduced if bank stabilization or stream bed and bank stability is designated or provided by a professional engineer. In no case shall the setback be reduced to less than 25'.

Chapter 7.11.12.3 Table 7-15, Separation of driveways for Non-Residential, Multi-Family and Mixed -Use Parcels. Posted Speed of 25-30 M.P.H. must have a minimum distance of 200 feet.

Chapter 7.3.3 Setbacks Table 7-A: Setback Table. The Residential Estate (RES-E) Zoning District requires a minimum front setback of 10 feet, and a minimum side and rear setback of 25 feet.

Chapter 4, Section 4.9.7.1, Variances, Purpose

The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

Chapter 4, Section 4.9.7.4, Variance Review Criteria.

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Chapter 4, Section 4.9.7.5 Variance Conditions of Approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

Chapter 4, Section 4.5.4, Appeal of a Final Decision of the Planning Commission.

Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from the decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

III. The Public Hearing Process

7. The Applicant presented the application to the Technical Advisory Committee (TAC) on December 1, 2016, at the regular scheduled monthly meeting, as required by Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.

8. The Application was presented to the Hearing Officer for consideration on April 27,

2017.

9. At the public hearing before the Hearing Officer on April 27, 2017, County staff recommended denial of the Applicant's request for variances.

10. The Hearing Officer, in her findings of fact and conclusions of law, recommended approval of the variances with staff recommended conditions as follows:

- a. The Applicant shall certify that the arroyo bank is stable or design and implement a stabilization plan to be approved by the County;
- b. The Applicant shall certify that the flood levels will not increase due to the development; and
- c. The Applicant shall comply with the conditions from the Santa Fe County Public Works Department.

One of the conditions of the Public Works Department was relocation of the driveway to the northern boundary of the easement. The other condition was to place delineators at the end of the culverts.

11. The Applicant objected to the condition requiring relocation of the driveway to the most northern boundary of the easement.

12. A public hearing on the Application was held before the Santa Fe Planning Commission (Commission) on June 22, 2017 and the Commission found that the Application was not well-taken and denied the Application. The Commission adopted an Order denying the Application on July 20, 2017.

13. On August 1, 2017, the Applicant filed an appeal of the Commission's decision to BCC with the Administrator.

14. Prior to the hearing before BCC, notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on August 23, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 28, 2017, as evidenced by a copy of

that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

15. At the public hearing before the BCC on September 12, 2017, staff recommended that the BCC deny the variance request and uphold the Commission's decision.

IV. Standard for Review

16. Chapter 4, Section 4.5.4 provides that "[a]n appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board." Accordingly, the BCC reviews this appeal *de novo*.

V. Compliance with the SLDC

17. County staff solicited and received agency review of the Application from the following agencies: Santa Fe County Public Works Department (Public Works) and the Santa Fe County Fire Marshal (Fire Marshal).

18. Public Works reviewed the Application for compliance with the road and driveway requirements of Chapter 7, Section 7.4 (Access and Easements) and Chapter 7, Section 7.11 (Road Design Standards). Public Works conducted traffic counts on Avenida Torreon on January 24th and 25th, 2017. The counts show the A.M. Peak volume at 4 vehicles and the P.M. peak volume at 5 vehicles. Public Works felt the traffic volume is low, but could not support the variance. Public Works recommended the following if the variance was approved:

- a. Applicant to place the driveway at the most northern boundary of the easement; and
- b. Applicant shall place delineators at the end of the culverts.

19. At the hearing before the BCC, Public Works further stated that the average daily traffic on Carissa Road is 75 cars a day. Peak hour traffic, between 8:00 am there were 7 vehicles and at 5:00 p.m. there were 3 vehicles. Public Works indicated that traffic is minimal and it is a residential, low volume road.

20. Based upon the traffic counts conducted by Public Works, the BCC finds that the traffic volumes are low enough to support the Applicant's variance requests.

21. The Applicant submitted Revised Civil Site drawings for the project placing the driveway at the northern boundary of the easement and placing delineators at the end of the culvert.

24. The BCC finds that the applicant's proposals in the Revised Civil Site drawings will adequately address the Public Work's conditions of approval.

25. The Fire Marshal reviewed the Application for compliance with applicable Santa Fe County Fire and life safety codes, ordinances and resolutions. The Fire Marshal determined that the driveway plan submitted meets the County standards for fire apparatus access roads of a minimum of 14' wide all weather driving surface and an unobstructed vertical clearance of 13' 6" within this type of proposed development. Further, roads meet the minimum County standards for fire apparatus access roads within this type of proposed development. The Fire Marshal recommended Final Development Plan approval, subject to conditions identified in the Fire Marshal's report.

26. As to the variance to Chapter 7, Section 7.17.5.2.6 to place facilities within the 75' foot setback from the FEMA designated Floodplain Hazard Area, the Applicant addressed the variance criteria in its Application letter and at the public hearing before BCC as follows:

A. The variance is not contrary to the public interest because the proposed finished floor of the well house is one foot above the base flood elevation, the building meets the County's 25 foot arroyo setback requirement and the embankment around the well house has been armored with rip-rap.

B. The following extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant:

- i. Situating the building in the southwest corner of the easement keeps it out of the line-of-site of the property owner's home;
- ii. Re-design and/or additional easement acquisition would increase project costs, impose further limitations on the current property owner and significantly delay the availability of this much needed additional source of water to the community.

C. The spirit of the SLDC is observed and substantial justice is done because the variance improves the building aesthetics for the home owner and neighborhood without compromising the protection and safety of the utility structure.

27. As to the variance to Chapter 7, Section 7.11.12.3.3, Table 7-15 to allow a 25 foot separation from access points rather than a 200 foot separation, the Applicant addressed the variance criteria in its Application letter and at the public hearing before the BCC as follows:

A. The variance is not contrary to the public interest because: the driveway will be used infrequently, no more than five days per week; there is a stop sign for westbound traffic on Torreon Road which eliminates conflicts between vehicles entering or leaving the site and westbound traffic on Torreon Road; and the intersection sight distance for southbound traffic on Torreon Road in approximately 400 feet, the speed limit is 25 miles per hour and AASHTO recommends a sight distance of only 200 feet.

B. The fact that the 200 foot setback cannot be accommodated without significant additional easement acquisition which would increase project costs, impose further limitations on the property owner and significantly delay the availability of water to the community constitutes an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant.

C. The spirit of the SLDC is observed and substantial justice is done because the variance provides for the full protection and safety of the property owner, the neighborhood, the community, District staff and all vehicle and pedestrian traffic along the affected sections of Torreon and Carissa Roads.

28. As to the variance to Chapter 7, Section 7.3.3.7, Table 7-A, to allow a 7.5 foot set back from the property line rather than a 25 foot setback, the Applicant addressed the variance criteria in its Application letter and at the public hearing before the BCC as follows:

A. The variance is not contrary to the public interest because the building is not occupied and is used only to house process piping and equipment associated with the well, and the building will be constructed of fire resistant materials consistent with the New Mexico Fire Code. Additionally, the structure is adjacent to a floodplain and therefore will not infringe on other structures.

B. Situating the building in the Southeast corner of the easement cannot be accommodated without significant additional easement acquisition which would increase project costs, impose further limitations on the property owner and significantly delay the availability of water to the community constitutes an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant

C. The spirit of the SLDC is observed and substantial justice is done because the variance improves the building aesthetics from the perspective of the home owner and neighborhood without compromising the protection and safety of the infrequent users of the unoccupied utility structure.

29. The Applicant acknowledged that one of the objectives of the property line setback requirement is to ensure that development does not pose a fire hazard or a nuisance to adjacent property.

30. The Applicant provided a letter from Steven K. Morrow, P.E., dated July 18, 2017, stating that he has analyzed the 13-foot encroachment by the proposed Well 19 utility building into the FEMA-Designated Flood Zone and certifying that the encroachment does not cause a rise in the Base Flood Elevation. Mr. Morrow's hydraulic calculations were enclosed with the letter.

31. The BCC finds that the Applicant has done an analysis sufficient to certify that there would be no rise in flood elevations as a result of the development.

32. The Applicant provided a letter from Steven K. Morrow, P.E. stating that he examined the Canada de Los Alamos arroyo bank adjacent to the Well 19 site at the northeast corner of Avenida Torreon and Carissa Road and certifying that the arroyo bank is sufficiently stabilized by existing vegetation to minimize bank migration. This certification is evidence by the letter from Steven K. Morrow to the County dated July 18, 2017. In addition, the Applicant armored the structure with rip-rap at a slope that is adjacent to the arroyo to ensure the structure was water tight.

33. The BCC finds that bank stabilization and bank stability for this project has been adequately designed or provided for by a professional engineer.

VI. Public Comment

34. The record contains testimony in support and in opposition of the Application. Joe Loewy provided testimony in support. Christina Horning and provided testimony in opposition to the Application. John Puls, president of the La Paz Home Owners Association (HOA), took a neutral position on the variances, but requested conditions.

35. Joe Loewy spoke about the need for additional water sources, in particular for summer peak demand. Mr. Loewy believes construction of the well is essential in order to meet the need. Mr. Loewy believes that variance requests are logical, and preserve the health, safety, and aesthetics of the community and environment.

36. Christina Horning expressed concern that the proposed well water contains antimony and that the Applicant has not established an undue hardship.

37. With regard to Ms. Horning's concern about antimony in the well water, the Applicant stated that antimony is regulated at levels of approximately six parts per billion. The Applicant has proposed the use of a blending system that is expected to reduce the concentration to around three or four parts per billion. The Applicant also stated that the Environment Department has approved the blending system on the condition that the well is sampled.

38. John Puls stated that the La Paz HOA has a neutral position on the variances, but expressed concern about sight lines. Mr. Puls indicated that the properties at 20 Aster Rd, 20 Aster Way and 24 Aster Way about the proposed development without screening and requested the BCC impose a landscaping condition to mitigate the impact on the neighborhood.

39. With regard to the request that landscaping be imposed to address the La Paz HOA concerns, the Applicant agreed to a condition of approval requiring additional landscaping and screening.

VIII. Conclusions of Law

40. Any findings or conclusions set forth above that may be construed to constitute a conclusion of law is hereby incorporated as such to the same extent as if it was expressly denominated as a conclusion of law.

41. The Applicant's appeal of the Commission's decision to the BCC was timely.

42. The record contain sufficient engineering plans to support the variance requests. The Applicant provided engineering certificates that the flood levels will not increase due to the development.

43. The July 18, 2017, certification from professional engineer, Steven K. Morrow, regarding the stability of the arroyo bank and bank stabilization supports reduction of the setback from FEMA designated floodplains pursuant to Chapter 7, Section 7.17.5.2.6.

44. As to the variance to Chapter 7, Section 7.17.5.2.6 to place facilities within the 75 foot setback from the FEMA designated Floodplain Hazard Area, the BCC finds that:

A. The variance is not contrary to the public interest because the Applicant's engineer provided certification that the banks are stable. Additionally, the Applicant demonstrated that, water tight with walls impermeable to the passage of water with structural components that have the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyance. The Applicant has demonstrated the proposed encroachment into the floodplain will not result in any increase in flood levels during the occurrences of the base flood discharge. Finally, the engineer has certified that the embankment of the arroyo is stable or agreed to stabilize the embankment, and has proposed rip-rap to fortify the building

B. The reasons offered to establish the extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant.

45. As to the variance to Chapter 7, Section 7.11.12.3.3 to allow a 25 foot separation from access points rather than a 200 foot separation, the BCC finds that:

A. The variance is not contrary to the public interest because the site will be visited infrequently by one maintenance vehicle. Additionally the Applicant has moved the driveway furthest east to meet staff recommended conditions.

B. The reasons offered to establish the extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship as the easement is in place and additional easement cannot be obtained.

C. The spirit of the SLDC is not observed and substantial justice is done if the variance is granted due to traffic counts showing peak A.M. volumes at four vehicles and peak P.M. volumes at 5 vehicles, and separation is not a concern as the driveway will be used infrequently.

46. As to the variance to Chapter 7, Section 7.3.3.7, Table 7-A, to allow a 7.5 foot set back from the property line rather than a 25 foot setback, the BCC finds as follows:

A. The variances are not contrary to the public interest because the structure is in a residential area and, the structure is not occupied, the existence of a structure containing a well and processing equipment does not pose some risk of fire or surrounding properties.

B. This variance, constitutes an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant. Obtaining additional easement is not optional and the intent of the setback was to create a buffer from existing residences. The proposed structure is not next to any other residential structures.

C. The spirit of the SLDC is observed and substantial justice is done as the structure has limited buildable area due to easement restraints.

47. The variances requested are not contrary to public interest because the driveway will be used infrequently, the setback from the property boundary does not pose risk to surrounding structures or property, and the engineer has provided all certification to comply with local, state and federal permitting requirements. 48. The Applicant has established that there are extraordinary and exceptional conditions of the property, such that strict compliance with the SLDC would result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the owner.

49. The spirit of the SLDC is observed by allowing the variance request. Additionally, the placement of the facility in this location does not pose a risk on surrounding properties or any other development in the surrounding area.

WHEREFORE, the Board of County Commissioners finds the Application is well taken hereby approves the Appeal of Eldorado Area Water and Sanitation District to allow variances of Chapter 7, Section 7.17.5.2.6 to allow an 800 square foot well production facility/and water treatment purifying equipment to be placed within the 75 foot setback from the FEMA designated Floodplain Hazard Area; a variance of Chapter 7.11.12.3, Table 7-15, to allow a 25 foot separation from access points; and a variance of Chapter 7.3.3. Setbacks, Table 7-A (Setback Table) to allow the facility to be located 7.5 feet from the property boundary with the following conditions:

- a. The Applicant shall discuss additional landscaping and screening with the La Luz HOA and provide additional landscaping and screening as needed to address the La Luz HOA concerns; and
- b. The Applicant shall install rip-rap on the driveway as determined necessary by an engineer.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

THE SANTA FE COUNTY PLANNING COMMISSION

Henry Roybal, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

VIII. PUBLIC HEARINGS

A. Land Use Cases

1. **BCC CASE #APP 17-5001 Eldorado Area Water and Sanitation District Appeal.** Eldorado Area Water and Sanitation District, Appellant, Steve King, Agent, are Appealing the Santa Fe County Planning Commission's Decision to Deny a Variance of Section 7.17.5.2.6, to Allow an 800 Square Foot Well Production Facility and Water Treatment Purifying Equipment to be Placed within the 75-Foot Setback from the FEMA Designated Floodplain Hazard Area; a Variance of Chapter 7.11.12.3, Table 7-15, to Allow a 25-Foot Separation From Access Points; and a Variance of Chapter 7.3.3, Setbacks, Table 7-A (Setback Table), to Allow the Facility to be Located within an Easement Which is 7.5 Feet from the Property Boundary. The 0.072-Acre Easement Site is within a 3.56-Acre Parcel and Lies within the Residential Estate Zoning District. The Property is Located at 3 Carissa Drive, in Eldorado, within Section 17, Township 15 North, Range 10 East (Commission District 5) [*Exhibit 5: Letters to Staff; Exhibit 6: Aerial View; Exhibit 7: Letter from Mr. Loewy; Exhibit 8: Letter and Supporting Material from Ms. Hornig*]

JOHN LOVATO (Case Manager): Thank you, Mr. Chair, Commissioners. Good evening. On April 27, 2017, the applicant/appellant presented three variances to the Hearing Officer for Public Hearing. The Hearing Officer was in support of the application memorializing her findings of fact and conclusions of law in a written order in Exhibit 10.

On June 15, 2017 the variance request was presented to the Planning Commission and the Planning Commission denied all three variances by a 5-2 vote because members believed the plans lacked sufficient information required for the request.

The appellants' original variance request: The appellants requested to place an 800 square foot well production facility and water treatment purifying equipment, to be placed within their 3,100 square foot easement. A detailed design of Well 19 was initiated in 2014. Based on results of this design investigation, the district proceeded with easement acquisition and well development. The appellants stated, As identified in the EAWSD utility master plan completed in July 2013, the district has an acute need to develop additional groundwater sources as required to meet our peak summer demands. Therefore, the appellant requested three variances to place the facility on the 0.072-acre easement site within a 3.56-acre parcel.

The appellant states, because of the lack of clarity regarding the basis for the County Planning Commission's denial of EAWSD request for variances for the Well 19 Production Facilities project, we defer to the findings and recommendations of the Public Hearing Officers as the basis for our request for appeal to the Board of County

Commissioners. The appellants further state with documentation submitted in the appeal that they are following all conditions recommended by the Hearing officer and County Staff as follows:

1. July 18, 2017, correspondence from Design Engineer MolzenCorbin certifying that the arroyo Bank is stable.
2. July 18, 2017, correspondence from Design Engineer MolzenCorbin certifying that flood levels in the arroyo will not increase due to the project with submitted Hydraulic calculations.
3. Revised civil drawings for the project placing the driveway at the northern boundary of the easement and placing delineators at the ends of the culvert.

The appellant addressed each of the variance criteria and staff responded as contained in this report.

Recommendation: As staff did not recommend the initial variance request, staff recommends the BCC deny the appeal and uphold the Santa Fe County's Planning Commission's decision to deny a variance of Chapter 7.17.5.2.6, to allow an 800 square foot well production facility and water treatment purifying equipment to be placed within the 75-foot setback from the FEMA Designated Floodplain Hazard Area, a variance of Chapter 7.11.12.3, Table 7-15, to allow a 50-foot separation from access points, and a variance of Chapter 7.3.3, Setbacks, Table 7-A, Setback Table, to allow the facility to be located within an easement which is 7.5 feet from the property boundary.

The Hearing Officer recommended approving all of the variances because she believed that the applicants met the variance criteria.

The Planning Commission denied the variances because they believed that the application and plans provided did not meet the requirements and evidence necessity to grant the variance and meet the variance criteria. If the decision of the BCC is to deny the appeal, the BCC may adopt the findings of the Planning Commission, as Exhibit 8 in your packet. If the decision of the BCC is to grant the appeal and the variance requested, the BCC may adopt the findings from the Hearing Officer, Exhibit 9, in your packet.

An appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions.

Mr. Chair, Commissioners, I stand for any questions you may have.

CHAIR ROYBAL: Okay, do we have any questions from the Commission? Commissioner Hansen.

COMMISSIONER HANSEN: So I was under the impression from reading the minutes that the Planning Commission asked for more information, was one of their concerns. Did all the information that the Planning Commission request – was that provided to us?

MR. LOVATO: Mr. Chair, Commissioner Hansen, that is correct. They have submitted all that documentation.

COMMISSIONER HANSEN: Okay. So that was one of the main issues with the Planning Commission was they felt there was insufficient documents and now you have sufficient documents.

MR. LOVATO: Mr. Chair, Commissioner Hansen, that is correct.

CHAIR ROYBAL: Thank you, Commissioner Hansen. Commissioner

Hamilton.

COMMISSIONER HAMILTON: I'll wait until – I'm happy to wait until we have public comment.

CHAIR ROYBAL: We'll get public comment first and then we'll go back to the Commissioners.

COMMISSIONER HANSEN: I just wanted to clear that.

CHAIR ROYBAL: That's good. So how many people here today would like to speak in support or opposition to this? So can everybody go ahead and come forward and be sworn in as one? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, respectfully, do we want to hear from the applicant and then additional feedback, I think, possibly?

CHAIR ROYBAL: Yes. We'll go ahead and go to the applicant first. But if everybody that wants to speak could kind of come forward and be sworn in. So we'll go ahead and hear from the applicant first.

[Those wishing to speak were placed under oath.]

[Duly sworn, Tanya Scott testified as follows:]

TANYA SCOTT: Mr. Commissioners, members of the Santa Fe County Commission, my name is Tanya Scott. I'm a member of the Law and Resource Planning Associates Law Firm. I'm here to represent the Eldorado Area Water & Sanitation District in this appeal before the Commission from the determination of the Santa Fe Planning Commission that the three variances that have been requested should be denied. I frankly am going to need some direction from the Commissioners because I realize this is a *de novo* proceeding. The rules in the development code are not very specific about how you proceed in a *de novo* hearing.

We're here today to present testimony and comment from a variety of members of the Eldorado family, including David Chakroff, who's the general manager. We have here Steven King, who is the project manager. We also have the chairman of the board, John Calzada, the treasurer for the organization, Elizabeth Roghair – I think is how she pronounces it, is here. And also we have an engineer from MolzenCorbin, Mr. Casey Cook, who is here also to speak in favor of this variance.

I think from a legal perspective it's very important to emphasize to the Commission that Eldorado has met the criteria for a variance in all three of the requested areas. Specifically, I also want to emphasize to the Commission how critical this new well is to the Eldorado Area Water & Sanitation District and also to the Eldorado customers that the district serves. The district serves I believe about 6,000 customers. They have been working quite diligently over the last few years to improve the system, to go to the State Engineer and have any questions about water rights, etc. resolved, which has been done through the issuance of a license from the State Engineer. They have recognized for a number of years now that they do need to improve their supply. Just simply having a license or the water rights recognized is not enough; you need to have wet water.

And so since 2014 they have been moving diligently towards the drilling and production and equipping of this Well #19 because it's critical for the district to meet its peak demands for the summertime through the addition of this well. The district was hopeful that this well would have come on line this last summer, the summer of 2017, but

because of certain delays it hasn't come on line. So it's even more critical that they push ahead with obtaining the necessary approvals which at this point mainly involve the variances involved here so that the well can come on line next summer.

As the general manager told me earlier today, the district was just lucky this year that it was a wet year and a mild summer so that they never had to impose drought restrictions because of their inability to meet peak demand. That may not happen next year. So they're very concerned about pushing this forward. They have a funding mechanism in place which is going to be threatened if they have more serious delays. They have a construction contract that's in place that's contingent upon the granting of a variance. That construction contract is also in jeopardy if it cannot be extended which would raise the cost of the well for the members of the – the customer base for Eldorado.

The members, or the management of Eldorado is prepared to explain to the Commission how this whole process came about, how they hired – I think it was GGI, Glorieta GeoScience to do the hydrology work that was required for them to determine what the well placement would be and so GGI identified the location of Well 19, and you're going to see that on one of the boards later on. So an exploratory well was drilled. It proved that it was going to be a productive well, so Eldorado then moved forward with acquiring an easement so that it could build a well house, equip the well, install the piping and plumbing that it needs for some water treatment and the pumping station, etc. that's required for it to go on line for its customer base.

The location of the well was basically not their choice. It's the choice of the hydrologists who did the testing, etc. to locate the best place to drill this well, which was done. The easement acquisition proceeded with a negotiation with the landowner who owned the property. The negotiations centered upon the size of the easement that was required and of course the price. And Eldorado felt at the time that even though it has condemnation authority just like the County of Santa Fe does, that it is much better for everyone concerned to be able to negotiate location, size, etc. of the easement, and a price, rather than proceed to condemnation proceedings which can be a lot more expensive, a lot more time consuming.

So the district was able to negotiate a location with the property owner who was very concerned about the placement of the easement on her property. She was also concerned about the aesthetics about the well house and how it was going to look perched on the edge of her property, and Eldorado and the landowner were able to reach an amicable settlement of the issues that the landowner had with respect to both location and the aesthetics of the well house.

So what we're faced with here is a request for three variances, one of which is that the well house will slightly encroach upon the FEMA floodplain. The second one is the setback from the property line will not meet the zoning requirements. However, that edge of the property line is on an open space area, and you're going to hear from the engineer about how Eldorado has met the recommended conditions of the Hearing Officer in order to assuage any concerns about safety, etc. And the last variance that they seek is one that allows a smaller division between the driveway that will serve the well house and the intersection. And with respect to that variance I would point out that Eldorado will address any concerns about traffic, because the traffic is very minimal in the area. You're going to see from the posters that we have here, it's an area of very low

density. The traffic counts are very low. There will be probably one visit per day, five days a week, from an Eldorado employee just to check on the well.

I know one of the concerns of the staff, and I presume the Planning Commission also was there is not sufficient area within the easement for repair trucks or drill rigs or whatever is necessary to service the well in the case that repairs need to be made or a pump needs to be pulled and repaired. The plans do not accommodate that kind of a necessity in the future. You're also going to hear from the engineers involved that that is a misconception, that there is room, both in the driveway and the easement to pull an entire drill rig onto the property so that it's completely off of the traveled portion of the road out in front of the well.

The Hearing Officer, upon hearing the request for the variances, recommended that they be granted with three conditions, all of which Eldorado has fulfilled, the first one being a certification from an engineer that the floodplain or the flood levels will not be increased by the construction of the well building. That has been done. The second one was a certification by the engineer that the arroyo edge was stable and not subject to erosion. That has also been done. There's been a certification. The third thing was that the driveway to the well building be moved as far north as possible on the easement so that there is a greater distance between it and the intersection. And I think maybe there was some misconception about that at the Planning Commission as well. I think the findings of the Commission indicate that they were unwilling to do that. Well, in fact, they have redrawn their drawings so that that driveway is as far north as they can put it on the easement. And also they have agreed to put delineators on the driveway to notify traffic that there is a driveway there.

You're going to hear from the engineer as well that the line of sight from that driveway is adequate to meet standards that apply to highways.

So with that introduction I would ask for a presentation from first, the general manager who is going to explain how the easement was acquired and why it was done in that way. Again, I seek your guidance. I don't know – I'm a lawyer. I'm used to being in a courtroom questioning people. I don't know if you prefer the witnesses to respond to questions or you just want them to make a presentation.

CHAIR ROYBAL: I think for now we can just go with the presentation and we'll have the Commission at the end ask questions.

MS. SCOTT: Thank you. With that I'd ask Mr. Chakroff to come forward.

[Previously sworn, David Chakroff testified as follows:]

DAVID CHAKROFF: Thank you, Commissioners. I am David Chakroff. I'm the general manager of the Eldorado Area Water & Sanitation District. I've been the general manager there since December of 2009. As Ms. Scott indicated we have a real issue. We've had an issue since the water district took over this water system in 2005 in terms of improving the infrastructure and providing sufficient water supply to meet the demands of the customer base. And this has – in the first several years after the district acquired the water system, because 2005 and 2010 the district had drilled and put into production two new high capacity wells, Wells 17 and 18. In our hydrogeologic analysis and looking at the demands of the community, both these two wells, 17 and 18, still were not sufficient to meet the standards that the New Mexico Environment Department and industry standards and guidelines provide for meeting customer demand for drinking

water. And those standards are basically you want to be able to have the well capacity to meet the peak demand of your customer base, which is typically in our case in June or July, and you need to be able to meet that capacity when your highest producing well is out of service. It's down for maintenance or something goes wrong and you can't produce from your highest well.

The district has never been able to meet that standard and still cannot meet that standard without this additional well. As I'm sure you're all aware of, for the past six years approximately we've been in the middle of a pretty severe drought situation in New Mexico and we have two wells that are down in the Galisteo Basin which are very susceptible to the seasonal precipitation and seasonal drought conditions. And when we have dry winters, little snowpack and dry springs and summer, we are unable to produce from those wells and in the past six years I think we've only been able to produce -- or past seven years -- we've only been able to produce from those two wells for two years. Fortunately, this past summer has been one of the years that we were able to produce from those well. If we had not been able to produce from those wells this summer then we would have been in a world of hurt and would certainly have been in water restrictions for our customers because we didn't have this Well 19 on line.

So as Ms. Scott indicated we have a hydrogeological firm, GGI, that does the hydrology for the district and so they have for a number of years been looking at -- they essentially did the work to indicate where the best location was for the Well 17 and Well 18 that were drilled and put on line between 2005 and 2010 and after that we asked them to start looking at the next best possible place for a high production well. They located this particular location along this arroyo and told us, put the X on the map and said this is the spot. They actually -- there was a little bit of a -- it wasn't exactly that particular spot but the only high ground that was in the zone that they were recommending where we drill a well was on this particular property.

So we approached the property owner and discussed this with the property owner. It just so happened that when we approached the property owner the home was on the market. It was for sale. So the property owner was not too excited about the fact that we were approaching her with the prospect for a well on her property when she was trying to sell the lot. So in order to make this as easy and not have to go through a condemnation process and try to get this resolved in a way that would maintain an attractive property for a potential buyer she had a number of conditions that she wanted to negotiate with us with respect to this easement.

And one of those conditions -- it so happens that the person selling the property was also an architect here in Santa Fe and so she had some very specific recommendations and desires and requests for the actual architectural structure that we would design and we took those into consideration, turned those over to our architect and he incorporated those aspects into the building so that it would blend in with the residential community and look like a casita on this property as opposed to a well house and a pumping station.

Well, the other request that she had was that she wanted to -- she had a very specific area on the property that she wanted us to limit these easement to, so that it would minimize the impact on her property from the sight lines from her house and it was, as you will see when the engineer gets up here that we kind of pushed the easement

over as far as we could to one side of the property, kind of out of the way of the home, and close to this open space, which was already -- which would not really impact the neighboring homes or minimize the impact on any neighboring homes.

So this all occurred in the summer of 2015 when we started negotiating this process and the property owner actually sold the property and before we completed the easement process but was working with the buyers. The buyers knew when they purchased the property that this negotiation was going on. And so we started negotiating with the new owners of the property when they closed on the property and they had the same concerns and wanted the easement located in that area and of that size. So we were fairly limited as to where we could put the easement.

So in September of 2015 we finalized the easement agreement. We went on to drill the exploratory well. Once we had drilled and tested the well in early 2016 we went back in accordance with the easement agreement that we had and we got the grant, the actual final grant of easement from the property owner for this site. And we've been working with the design engineers every since then and with the County trying to resolve these issues to get this well on line. So that's kind of the history of how we got to where we are at this point and I'll turn it over to Steve next and he'll introduce the engineers who will give a little bit more detail on the location.

CHAIR ROYBAL: Thank you, Mr. Chakroff.

[Previously sworn, Steve King testified as follows:]

STEVE KING: Good evening, Mr. Chair and Commissioners. My name is Steve King. I'm the project manager for Eldorado Area Water & Sanitation District. My comments will be brief because I think Tanya and Dave did a more than adequate job of providing kind of the highlights on the background and the history of this project. I'll just make a couple of quick notes. I think the point has been made that Well 19 is a critically important new source of supply in order for us to safely and reliably meet the water demands of the 23 communities and the over 6,000 residents that we serve. So I think that point's been made I'll emphasize that.

The other thing, just to add to Dave's history. The project started in 2014. He gave you the sequence of events. To date, the district has invested over \$600,000 into this project at this location with the siting and the planning, working with the hydrogeologist and the engineers and the actual construction of the well. So we're well invested in that specific location. The other thing that we've done is, as was mentioned, is we've completed the detailed design for the remaining features, which are basically the small house, which is the focal point of a lot of this evaluation from the County, and all the mechanical equipment and pumps and stuff associated with this facility that are housed in that well house, and then all the interconnecting piping.

So we completed that design in early 2016. We actually went out to bid for that project in March of 2016 and we actually made a contingent award to the lowest responsive bidder back in May. So that's important. So the bid price for the well house and the interconnecting piping is nominally just over another million dollars. So all in, the way the project is configured right now, it's about a \$1.6 to \$1.7 million well. These water supplies are not getting cheaper and easier to find these days. So it's expensive already.

Two points associated with that: If we were to experience significant additional

delay there'd be two implications. One I think Dave mentioned, that we secured a Drinking Water State Revolving Loan funds to fund the construction. If the project is significantly delayed that may prevent us from using a portion or all of those funds for this very important construction project. And the other thing that would be required, we'd have to go out and rebid. Both of those actions could significantly further increase the cost of this already very expensive project.

And I'll just emphasize a last point and I think Dave covered that very well, is that we've tried to be very pro-active in working with not only the owner where we acquired the easement but also with the local homeowners association, La Paz to make sure that we put this well house structure in the most acceptable location and that we designed it with all the architectural features that were required to meet the aesthetic or the architecture of that particular neighborhood.

So those are my brief highlights and with that I'm going to hand it –

MS. SCOTT: Mr. King has a number of letters of support from the community.

MR. KING: Which were distributed – they were distributed just prior. I saw those go around. So, yes.

CHAIR ROYBAL: Thank you.

[Previously sworn, Casey Cook testified as follows:]

CASEY COOK: Good evening, Commissioners. Thank you for having us tonight. I know it's getting late for you. You've been here since 2:00 working so I will also try to be brief. I would like to tender an exhibit. It's basically what you see in front of you. I don't believe it's in your packet. If it is, it's outdated, so may I? My name's Casey Cook. I'm an engineer with the firm of MolzenCorbin in Albuquerque. I am a consulting engineer for Eldorado Area Water & Sanitation District and I am the project manager for the Well 19 project.

I'm going to go over some of the technical aspects of the variances and why we believe they are not contrary to the public welfare and why I believe they uphold the spirit of the Sustainable Land Development Code. Before I launch into those, one other thing that I wanted to add to the history of the project is Mr. Chakroff and Mr. King described that one of the requirements for a new well and for a pumping and treatment system as this one is is that you submit your plans to New Mexico Environment Department Drinking Water Bureau for approval prior to even going out to bid for the project. So we made that submittal prior to bidding the project and got the approval. The Drinking Water Bureau looks at aspects such as the sanitary completion of the well and such as the water quality aspects of the delivered water and they were in favor of the project and approved on all counts.

Okay, with that I'll go over some of the variances. The poster board in front of you basically lays out the features of the site. North is up. There's a couple of roads coming in here. Avenida Torreon comes from the north and turns east. Carissa Road comes from the south. So I'm just going to kind of walk you through some of the variances that we've requested in terms of the offsets and some of the aspects of those from the engineering standpoint.

The well house is located right here and the well itself is right here. Okay. Some of the important things to look at on this are the driveway which is now – it used to be

about in the middle of the property, aligned with the well, but it has now been moved up to the far north part of the easement, creating a 50-foot separation from this intersection. The FEMA floodplain boundary is this line right here, and as you can see the corner of the building, about 12 to 13 feet of it encroaches upon that floodplain. And finally, the property boundary itself is right here and here is where the corner of the building comes within 7.5 feet and is another requested variance. So with all of those let me get back to my notes.

Okay. The first variance, the driveway setback – we understand the intent of the driveway setback is based on safety so that a car pulling – a vehicle pulling in or out of the driveway doesn't pose a hazard to those traveling on the main roads. The code requires 200 feet; we're requesting a variance to allow for 50 feet. There's an organization called AASHTO, the American Association of State Highway and Transportation Officers that issues recommendations and guidance on aspects of safety on highways and roads. Their recommendation for an area like this in a neighborhood with a 25 mile per hour speed limit is that the sight distance be 280 feet or more. And what you'll see – I'll put up another poster here, this is a pull-out of the same picture you saw earlier. Here's our site. Here's the roads coming in, so coming from the north there's about 400 feet of sight distance. Coming from the south, there's about 300 feet. Both of those exceed the recommendations of AASHTO, and coming from the east on Avenida Torreon there's a stop sign. So any traffic coming in here will have to stop before turning either direction and creating safety.

The other thing I would point out is that the typical vehicle that visits this site is about 12 feet long and it has plenty of room, and these are the operators and maintenance personnel, when they come into the site they will pull up onto this driveway and be off of the main drive, open the gates, pull in, do their work, come out, park here, close the gates and then drive away. At no time will they be stopped on this road creating any kind of hazard.

As I think was mentioned earlier the traffic counts in this area are quite low. I believe it's four vehicles in the morning and five in the evening. And the district's operators will visit the site perhaps once a day during the weekdays.

The property setback – our understanding of the intent of the property setback are for two reasons: one, to prevent a fire from spreading from building to building if they're too close together, and two, is to ensure that your neighbor is not so close as to create a nuisance. The setback is 25 feet from property lines. In this case we're asking for a 7.5-foot setback, and again, I think as has been touched on already, where that setback occurs is adjacent to an open space drainage easement which cannot be built on and won't be built on and therefore there is no issue of structures being too close together.

And finally, the floodplain setback. The code requires a 75-foot setback from the FEMA floodplain boundary. In this particular case, because of the site constraints and the size of the building required to house the equipment necessary for the operation of the well, it was necessary to encroach about 12 feet into the floodplain. There's a number of issues and reasons why it is thought that you don't want to encroach on a floodplain. One of course is safety. This is an unoccupied building and so safety is not necessarily ever going to be an issue here during a 100-year flood. The second is a potential for a flood to create damage of the structure or any of the surrounding buildings, structures, etc. To

address that issue we've done what is typical engineering practice in a floodplain and that's to raise the finish floor of the building one foot above the projected flood level, and also to raise the well pad one foot above that level and all of the electrical equipment. So that if a 100-year flood event ever occurs it will not flood the building; it will not flood the well.

Those elevations are all in the engineering plans that have been submitted to the Commissioners. One thing I wanted to point out with another exhibit – this is a blowup of a figure that's in the floodplain certification, the no-rise for certification. And those show essentially – here's our well building. North is up. There's Torreon Avenue, and here's basically the floodplain. It's a very broad and low floodplain. The flood height is about three feet from the base. It's approximately 600 feet wide. Our building encroaches about 12 feet on it. That's about two percent. The no-rise certification that my colleague, Steve Morrow, prepared and submitted essentially showed that there is no rise. This is the channel prior to the construction of the building, and this is the channel with the flood height after construction of the building.

The other issue involved with the floodplain of course is channel stability and the concern that perhaps that channel may migrate and start to erode away at the edge of our property and perhaps damage the building or otherwise compromise the site. Steve Morrow also prepared a certification of bank stabilization, which included 20 years of aerial photos showing that the channel has been stable over those 20 years and has not changed at all. It's a well vegetated channel and in order to also address potential erosion issue on our property should a flood come through, we intend to have the contractor install rip-rap on that slope that's adjacent to the channel.

I believe that's all I had to say tonight. Thank you for your attention.

CHAIR ROYBAL: Thank you, sir.

MS. SCOTT: That concludes the applicant's presentation. If you have any questions we'll be glad to address them or wait until after the public comments.

CHAIR ROYBAL: I think we'll wait till after public comment. Thank you.

MS. SCOTT: Thank you.

CHAIR ROYBAL: Okay, so those individuals that would like to address the Board.

[Previously sworn, Joe Loewy testified as follows:]

JOE LOEWY: Mr. Chair, Commissioners, County Manager and County Attorney, staff and friends. Good evening. My name is Joe Loewy. I live at 6 Monterey Road, Santa Fe. I am here today as a ratepayer in the Eldorado Area Water & Sanitation District and a volunteer appointed member of the EAWSD Capital Planning Advisory Committee. In the interest of full public disclosure I also wish to note that I currently serve as an appointed board member of the Santa Fe County Housing Authority. I wish to briefly speak today in support of Case #V 17-5000, EAWSD variances.

In 2012 my wife and I built our home in Eldorado. One of the most significant reasons for us choosing to live in Eldorado was the fact that the water district had a safe and reliable water system with sufficient wells to produce water for the approximately 7,000 residents in our area. As a volunteer committee member of the water district I have come to appreciate the critical need for additional water sources, especially in order to

meet the summer peak demand. Construction of the Well 19 is essential in order to meet this need.

The variance requests proposed are logical, and preserve the health, safety and aesthetics of the community and environment. The Sustainable Land Development Code Hearing Officer's recommendation found that the water district application, and I quote, "is well taken and recommended that it should be granted" subject to certain conditions. Each one of these conditions has been substantially met by the water district. The Hearing Officer further noted that there are extraordinary and exceptional situations or conditions of the property as demonstrated by the water district application. Most importantly, the Hearing Officer noted that the variances requested, a) are not contrary to public interest; b) owing to extraordinary and exceptional conditions of the property the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the owner; and c) granting the variance will result in the spirit of the SLDC being observed and substantial justice done.

Lastly, I wish to point out to you that the project has been both reviewed and is supported by the neighborhood homeowner associations at and surrounding the well location. The community wants and needs this well to be completed. Please approve the water district appeal of the Planning Commission denial of variances to enable this project to move forward as quickly as possible. This well is critically needed by my neighbors, my family and the entire Eldorado Water District community. Thank you.

CHAIR ROYBAL: Thank you, Mr. Loewy. Can we have our next speaker please?

[Previously sworn, Christina Hornig testified as follows:]

CHRISTINA HORNIG: Honorable Commissioners, my name is Christina Hornig. My husband, daughter and I live at 24 Aster Way in La Paz. Our property adjoins the Carissa Road property where the water district is proposing to build the well facility. I'm here to request that you uphold the order from the County Planning Commission correctly denying the variances requested by the water district and affirming the need to follow the rules established in the County's Sustainable Land Development Code.

I'll start with two overall perspectives. The water district has requested these variances based on the premise that the addition of this well to the district water supply is in the public interest, and that strict application of the SLDC constitutes an extraordinary hardship to the district. While we recognize that reliable water supplies are important, this water comes with a problem named antimony. The water's antimony level is well above the EPA specified maximum contaminant level allowable for drinking water. As Steve King of the water district noted at the June 15, 2017 Planning Commission meeting, the district's engineer has developed a plan to blend this water with water from the district's existing wells, none of which contain detectable levels of antimony. As Mr. King stated, the water from this well "normally serves that immediate neighborhood" so our family will be faced with a change to drinking water, perhaps slightly below the EPA specified maximum contaminant level for antimony, while other district customers will continue to receive antimony-free water. As parents and members of the public we do not see the introduction of contaminants at any level to be in the public interest.

The other general concern we have is the district's claim that following the requirements of the SLDC represents an undue hardship. We think the findings

documented in the Planning Commission's order denying the variances state the situation clearly. "The variances are requested due to the applicant's failure to obtain sufficient easement to meet SLDC requirements rather than due to any extraordinary or exceptional conditions of the property."

In the information presented at the various hearings the district has repeatedly stated that it was unaware of the requirements of the SLDC and the codes that preceded it. As an example, at the hearing with the Hearing Officer in April Steve Morrow of MolzenCorbin, the district's engineering firm, stated, "Originally we were under the impression that the County did not have any setback requirements and the Eldorado design guidelines were the only setback requirements we were required to abide by."

The district has repeatedly discussed the money that the district has invested in the well to date as justification for the hardship claim. The district has not discussed the fact that the placement of the facility was affected by error by one of its employees or contractors. The minutes of the district's board meeting on March 2, 2017 discussed delays to the permitting of the well facility due to a discrepancy found with the FEMA map that was used to identify the floodplain lies and references, "further discussion regarding who will be responsible for the cost to correct the error of the misidentified floodplain."

This error is apparently present in the site plan approved by Steve Morrow of MolzenCorbin in October 2017 that was submitted with the variance requests. This site plan shows the limit of FEMA floodplain on the far side of the property line, while as taxpaying district residents we are troubled by the fact that our money will be wasted due to errors on the part of the district's employees or contractors. We do not believe that these self-inflicted errors justify the claim of hardship.

This encroachment into the FEMA designated floodplain is the most concerning of the specific variance requests. As Vicki Lucero of the County's Growth Management Department noted during the public hearing with the Hearing Officer on April 27, 2017, "The setback requirement from the floodplain that was actually a standalone ordinance that has been in effect since, I believe, 2008. So those setback requirements, they got carried over into the SLDC but they have been in effect for several years."

Ms. Lucero also addressed the issue during the Planning Commission hearing on June 15, 2017 saying, "They're actually encroaching into the floodplain with this structure, but the 25-foot setback is the minimum that the code would allow with bank stabilization." The order from the Planning Commission denying the variance correctly concludes that "obtaining sufficient easement to avoid variances could have been accommodated since the setback requirement existed prior to the easement acquisition. The applicant's decision to acquire an easement for this project which would require variances does not constitute an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar or exceptional practical difficulties or exceptional and undue hardship to the applicant."

I would also like to correct some statements that the district has made concerning the support of the La Paz Homeowners Association for these variances. For full disclosure, my husband is a member of the board of the La Paz HOA but has recused himself from decisions concerning this matter. At the April 27, 2017 public hearing with Hearing Officer, Steve Morrow of MolzenCorbin stated that, "It's my understanding that

the neighborhood association told the district that there would be no objection to encroaching on their setback."

In their request for this appeal, the district states that the variances are required to accommodate the needs and expectations of the La Paz Homeowners Association as well as the property owner. This is not correct as evidenced in the letter that the La Paz Homeowners Association sent to the County at the district's request on September 1, 2017. This letter explicitly states that, "The La Paz Homeowners Association must take a neutral position on the three requested variances" and explains that the association's primary interest is in the aesthetics of the proposed building and landscaping.

There are other concerns that I could raise at this point but we believe this summarizes the most important considerations regarding the water district's appeal of the Planning Commission's correct order denying the variances. I ask that the Board of County Commissioners confirm the Planning Commission's correct application of the SLDC and its requirements and reject the water district's appeal of the Planning Commission's order. Thank you. May I approach to give you copies of the minutes that I quoted and the letter from the HOA.

CHAIR ROYBAL: Yes. Or John can bring them up for us.

[Previously sworn, John Puls testified as follows:]

JOHN PULS: Good evening. Thank you for your time. My name is John Puls. I am the president of the La Paz HOA. Our association is in support of providing an adequate water supply to the greater 285 Corridor. Having said that, do I wish this well and well building were actually in Eldorado rather than La Paz? Yes. But I also believe that we can't push those things for the common good on to our next door neighbor.

As I stated in my letter to the Commissioners, since the well and proposed well building will be located on private property within the La Paz HOA and where an easement by the property owner has been granted, the La Paz HOA must take a neutral position on the three requested variances. We do, however, question to reason for the variance regarding the driveway setback. Since all roads in La Paz are privately owned and maintained by the association we question if the County has guidance on a private road.

Our main concern are sight lines. Although the property owner granted an easement, her property or their property is screened by a berm and trees. The properties on 20 Aster Road, 20 Aster Way and 24 Aster Way abut up against it and there's no screening. Our main concern is mitigating how a casita-looking building then with a fence around it will look in a residential neighborhood. Those two properties, 20 Aster Way and 24 Aster Way, look straight at a well building with a fence around it.

If landscaping could be provided it might mitigate and soften the aspect of staring down at fencing. That's all I have for you. Thank you for your time.

CHAIR ROYBAL: Thank you, Mr. Puls. Okay, is there anybody else that wants to address the Board? Okay, seeing none, we'll go ahead and go to Commissioners, and we'll call up people for questions. Did you have something additional to add?

MS. SCOTT: Mr. Chair, is the applicant able to respond to some of the public comments at this time?

CHAIR ROYBAL: Yes. We can do that. It would be fine.

MR. COOK: Thank you, Commissioners. I would address the issue that

was raised by the person who is in opposition to the project. When the well was drilled an unusual constituent from my experience showed up in the water quality results called antimony. It's a metal and it is regulated by the Environmental Protection at levels of approximately six parts per billion. This well has nine parts per billion, although some of the testing that had been done subsequent to drilling the well suggests that the levels may drop off as well as pumped.

Nevertheless, in order to deliver safe, high quality water to the residents of the district, some kind of treatment was required. All of the other wells within the district, and they operate 11 or 12 wells, none of them I should say has antimony above the – actually, it's non-detectable. If you test it you can't detect antimony. So the best and most practical way to treat the water, and many communities throughout the state do this with arsenic and other contaminants was to blend it at approximately a one-to-one ratio, or one-to-two ratio depending on what the goal is for delivering water with antimony below the standard.

With the blending system the expectation is that the concentration of antimony will be around three to four parts per billion. The Environment Department has approved that system so long as the district continues to sample and confirm that the water is delivered as such. I would add that – I would say that probably half of the wells in this state, a quarter to a half, have water that contains contaminants that are below the maximum contaminant level. And if the standard is not to deliver water with any contaminants we would have to shut in a quarter to a half of the wells in this state. Thank you.

CHAIR ROYBAL: Thank you. Okay, so we're going to go ahead and start with questions from the Board. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I was patient and quiet in listening to the discussions, and I say that respectfully because I think we could have got to deliberation maybe a little quicker, but that's not our fault or anyone's fault but it's always good to listen and sit back and maybe read a little bit more and refrain, but essentially, there was a sitting confusion associated with this particular site and a process that wasn't completely followed and then everybody is trying to reconcile those differences to figure out how to make it work, is the way I read it. We had a Hearing Officer that went through a discussion and made recommendations in April and then we had the Planning Commission raise some additional questions which I went through and read and I actually appreciated and thank the Planning Commission in their efforts and their commitment to help us because after that, then we actually had some additional information provided to substantiate some of the concerns that were raised by the Planning Commission.

So I got a little turned around myself when we were looking at the documents and analyzing the recommendations and the recommendation of the applicant saying, well, we're going to go with the Hearing Officer's recommendation. I can understand why you'd do that because it was favorable to what you're requesting but in essence, as part of that whole process that I just iterated, there was additional information that was helpful to the overall decision and it brings us back here today.

I think logistically, Mr. Chair and Commissioners and staff, we may collectively be able to have some discussions relative to policy and the deliberations that our Planning

Commission makes before they actually take a vote on the project. I've been in issues and I'm in issues now but it may have been helpful to have a tabling of the item at the time as opposed to an up or down vote to attain additional documentation and then make a determination but maybe there's some things we can set in motion by way of policy associated with the process that creates that awareness of the information so that they can garner the additional information they might need before they actually vote on a determination.

All that being said, I appreciate everyone's comment. I want to go specifically to the last gentleman's comment and appreciate his candor and everyone's candor in their statements, but that there's some siting concerns still that exist associated with this particular location that aren't accommodated by fencing. And so everything that I pull away from the discussion and the evolution of what's occurred is that we still have a little work that we can do, I believe, to make the site potentially work but to also address some of those siting issues that were raised by that last gentleman in particular.

And so, Mr. Chair, that's all I have right now. I want to hear from my colleagues but that's kind of my perspective to this point. Thank you.

CHAIR ROYBAL: Thank you, Commissioner Anaya. Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Commissioner Anaya. I actually, I agree with you. I think the Planning Commission could have tabled that and asked for that additional information and been able to make a more complete decision, but I'm grateful that they asked for those pieces of information and that we saw that the driveway has been moved and that there is additional drawing. I'm wondering, as an applicant, are you willing to do a little more landscaping?

MR. KING: Yes, I think the short answer to that is yes. We're trying to implement a project that is sensitive to and addresses the public concerns, the specific and the general.

COMMISSIONER HANSEN: Okay. Thank you. You've gone the extra mile to make the place look like a casita so I would assume that that would be making it look attractive to the neighborhood is an important issue to you. Also, in regard to the FEMA issues, I worked with Shelly Cobau, who was one of our FEMA experts and we have extremely strict FEMA standards in this county, which I am grateful to her for, because I recognize that that is an important issue. There are many people right now suffering who might have been in floodplains in the south.

So with that said, I saw that you did make the base flood plain elevation by raising the corner, so it is one foot above the BFE; yes? So you've raised the building so that it is one foot above the floodplain. Correct?

MR. COOK: Correct.

COMMISSIONER HANSEN: So that's a concern. And then I know this is kind of a little bit off topic but since we have such strict FEMA rules, are we a part of a participating community rating system that makes the insurance rates lower?

MR. LOVATO: Mr. Chair, Commissioner Hansen, we are not.

COMMISSIONER HANSEN: Why not?

MR. LOVATO: Mr. Chair, Commissioner Hansen, we've tried to participate in it. I think this comes by way of your guys' decision in how we move

forward towards that.

COMMISSIONER HANSEN: Okay. It's just something we can look into, along with policies that Commissioner Anaya spoke about. But I feel like in some ways you've met the FEMA requirements because of the one foot and raising the BFE to that degree. So I don't have any problem with that and I am appreciative that you moved the driveway also to the very north end. And so you're saying that the driveway is only 50 feet from the intersection?

MR. COOK: Correct.

COMMISSIONER HANSEN: Okay. And I'm sorry, but I didn't really understand how the truck is going to get in and out without blocking the road. Is it an electric gate that they can open and close and then drive in, so they don't have to –

CHAIR ROYBAL: It appears that the gate would have to open inward as well.

MR. COOK: May I approach? Chairman, you're correct. They do need to open in and this is just a rendition. This driveway is approximately 20 feet long and the truck that services it is quite a bit shorter. So he would come in, drive in here, park, step out, open the gates, and then drive in.

COMMISSIONER HANSEN: Okay. So the gate is inside.

MR. COOK: Yes. Here's the gate right here –

COMMISSIONER HANSEN: That's perfect. You answered my question.

MR. COOK: It's not electric at this point but it could be, but it should open inward so the gate can safely –

COMMISSIONER HANSEN: I thought the gate was at the road. I'm sorry. I just wanted to clear that up. And when you did traffic counts, what were the traffic counts?

MR. COOK: Commissioner, I didn't do the traffic counts; I relied on the County's, and I believe the County staff traffic counts – in the morning four cars, four vehicles, and in the evening, five.

COMMISSIONER HANSEN: Okay.

JOHNNY BACA (Public Works): Mr. Chair, Commissioners, so there was a traffic count that was conducted in January 23, 2017 and the average daily traffic on Carissa Road is 75 cars a day. Peak hour traffic, between 8:00 a.m. you had seven cars and at 5:00 p.m. you had three. So it's minimal. It's not a lot of traffic out there. Residential, low-volume road. Any other questions?

CHAIR ROYBAL: I think that answered it. Commissioner Hansen, you still have the floor.

COMMISSIONER HANSEN: I think I've covered a number of points for the moment.

CHAIR ROYBAL: Okay. I'm going to go to Commissioner Hamilton. I'll go to Commissioner Moreno last since it's his district.

COMMISSIONER HAMILTON: You get special consideration.

CHAIR ROYBAL: Extra time.

COMMISSIONER HAMILTON: So I had a brief question about being in the floodplain and raising up a foot is obviously good, etc. What about the durability of the rest of the building? So I assume this is – maybe it shouldn't be our concern but

presumably that would be something the district would have to absorb if the building is not sturdy to a flood, or resilient to a flood, I guess is the appropriate term.

MR. COOK: This is the architectural drawing from the package, the plan set that was submitted, A-201, showing basically the renderings of the building, but more importantly I draw your attention to the cross section here. If a flood occurs, the 100-year flood, what it will rise up and encounter, versus ground, but of the building it will be the concrete foundation which is what gives us that height above the BFE, base flood elevation. The foundation itself, it will be buried, I believe it's a foot and a half with these large concrete blocks so it's well anchored underground and it should withstand a considerable amount of force from a flood. It's not expected that the velocities of this flood will be very high. It's fairly flat. It's fairly well vegetated and fairly rough, so it does resist high velocity water, unlike say, a concrete channels. So the forces aren't expected to be extraordinarily high but the building is quite sturdy.

COMMISSIONER HAMILTON: Okay. And just for the record, a 100-year flood will occur.

MR. COOK: A matter of when.

COMMISSIONER HAMILTON: It's only a matter of when. And then – so I had a question, and it's partly just because I'm a nerd, the issue of the bank stability, and there was reference made to the historic stability of the bank. That's not really the question. The question is when you put – it's like having a stable laminar flow in a sand channel and then sticking a rock in it, and you have a certain amount of movement that's generated by the placement of that. Right? Hydrodynamics. New hydrodynamics. And what that – I assume that was examined.

MR. COOK: Yes. I think there's two issues that come with that. One is, is the channel going to start migrating back and forth and encroach on the property in question? And the other is, during a flood, if it does rise up, regardless of where the channel is, it's going to overbank. If it starts to encroach on our property on the banks just adjacent to the building we'll add a road. So addressing the first potential concern was looking at what was available on Google Earth, which is about 20 years worth of photos and there is no evidence of any channel migration. It's very stable as you look across, and that's included in the bank stabilization certification letter, if you want to look at that.

The second issue with regard to stabilizing the actual bank adjacent to the building, when the contractor builds and develops the site rip-rap will be placed, big stones, very heavy, very resistant to flooding, which will protect the bank from being eroded away and undercutting the building. That's a common practice in engineering in areas where you expect floods.

CHAIR ROYBAL: Commissioner Hamilton, did that answer your questions.

COMMISSIONER HAMILTON: That's all my questions. I have some statements but I will happily defer to Commissioner Moreno.

COMMISSIONER MORENO: Thank you. Can you tell me what is there now? I was good. I declined to drive by to see where things were.

MR. COOK: The only thing on this site that's part of this project is a well.

COMMISSIONER MORENO: And nothing else?

MR. COOK: No, everything else is proposed but not yet built.

COMMISSIONER MORENO: And is there a cap now where the well will be?

MR. COOK: I don't have a photo of it handy but it sticks up about 18 inches, two feet off the ground, steel casing and a cap welded on top to protect it.

COMMISSIONER MORENO: Okay. How close are culverts in that area? Torreon is a pretty well traveled road.

MR. COOK: Interestingly, there is a culvert proposed for the driveway as you may have seen. Interestingly enough, this is simply a low-water crossing. There is no culvert under Torreon. So when the flood comes down here, it's got a little bit of a dam to build up and overtops it and keeps flowing. There may have been a culvert there once upon a time because I believe it's been observed that when water pools up here it starts to appear on the other side before it overtops it, but there's no physical evidence of it at this point.

COMMISSIONER MORENO: And would that be a risk for people and their property around there? If it overbanks?

MR. COOK: Has anybody seen that happen in the district.

MR. PULS: [speaking from the audience] Yes, within the past five years, and there is a culvert there that got plugged during a major flood. Engineers that we talked to suggested to just build it up with rip-rap on the south side and let the water run up over Torreon.

MR. COOK: At the location of the building, water only builds up about three feet, so the road being a little bit higher – we didn't calculate how high the flood would be but of course it's never advisable to drive across a running stream when it's overtopped the road.

COMMISSIONER MORENO: Yes. And you know how people are in their cars when they're going through a little puddle that turns out to be a little bit bigger.

MR. COOK: Yes. Plenty of Youtube videos to demonstrate that.

COMMISSIONER MORENO: Mr. Lovato, may I ask you, what from your perspective, why did the Planning Commission decline to punt? If that's the proper term.

MR. LOVATO: Mr. Chair, Commissioner Moreno, after reading the minutes of that Planning Commission – I was not in attendance – it appeared that it was insufficient engineering is what they kind of labeled it as, meaning the base flood elevation, a no-rise certificate wasn't provided and then as well as the stabilization. That was the three topics I saw that were noted in the minutes.

COMMISSIONER MORENO: Was it that they had not submitted them or were they not adequate?

MR. LOVATO: Mr. Chair, Commissioner Moreno, it was that they had not submitted those as of – at that point.

COMMISSIONER MORENO: Okay. That helps a little bit. I'm glad that – to everybody – I live in Eldorado and there are lots of swales and even in the old town where I live there's still a lot of areas of when it's raining it's a mess. And there – it's kind of a problem when a lot of the dirt roads are mushy and that's a concern in any case. But in the case of a well, I would expect to see more than just a culvert and rip-rap is a

good medium for that. I think I'm done. Thank you.

CHAIR ROYBAL: Okay, and I think we can have a motion and then after that we can have additional comments or what you have to add. So is there any other questions?

COMMISSIONER HANSEN: I'll make a motion.

CHAIR ROYBAL: Okay.

COMMISSIONER HANSEN: I move to approve the three variances and approve the project.

COMMISSIONER HAMILTON: So it's approving the appeal?

COMMISSIONER HANSEN: Yes. Is that the correct way?

CHAIR ROYBAL: To approve the appeal?

COMMISSIONER HANSEN: Approve the appeal.

CHAIR ROYBAL: Okay. Do I hear a second?

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: We have a motion and a second. Comment, Commissioner Anaya?

COMMISSIONER ANAYA: Mr. Chair, just speaking to the comments that were made earlier, it sounded like there was agreement that they would do some additional landscaping, so I would add a condition for additional landscaping and screening. I'm thinking and I'm thinking, what were they thinking? Trees? Is that what the thought was?

MR. PULS: [speaking from the audience] Anything that helps screen – trees, shrubs. It doesn't have to be lavish. Something that [inaudible]

COMMISSIONER ANAYA: Yes, I guess I would just add the friendly amendment, if we could have a condition on additional landscape and coordination and at least discussion with the association. Correct? You're from the association, correct?

COMMISSIONER HANSEN: I accept that.

CHAIR ROYBAL: Okay, and along with that friendly amendment, I know that Commissioner Moreno also asked for some rip-rap instead of culvert with the applicant.

COMMISSIONER MORENO: As necessary.

COMMISSIONER HAMILTON: Like as engineeringly appropriate?

CHAIR ROYBAL: Would the applicant be willing to do that?

MR. KING: Yes.

CHAIR ROYBAL: Okay. So we have a friendly amendment asking for screening.

COMMISSIONER HAMILTON: The second accepts that.

CHAIR ROYBAL: And then also some rip-rap for the flooding.

COMMISSIONER HANSEN: Yes. I accept both of those.

CHAIR ROYBAL: And the seconder accepts that as well?

COMMISSIONER HANSEN: Yes.

CHAIR ROYBAL: Okay, so we have a motion and a second. Any other discussion?

The motion passed by unanimous [5-0] voice vote.

